National Labor Relations Board



Weekly Summary of NLRB Cases

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Alpha Associates (11-CA-19638, 19828; 344 NLRB No. 95) North Charleston, SC May 31, 2005. Based on the Respondent's affirmative defenses to the complaint allegations that are inadequate and without merit, the Board found no factual issues warranting a hearing and granted the General Counsel's motion for summary judgment. It held that the Respondent violated Section 8(a)(5) and (1) of the Act by: (1) unilaterally laying off unit employees without notifying or bargaining with UNITE; (2) unilaterally granting a wage increase to unit employees without notifying or bargaining with the Union; and (3) failing and refusing to meet and bargain with the Union since January 16, 2003. [HTML] [PDF]

The Board decided that an affirmative bargaining order, with its temporary decertification bar for a reasonable period of time, is warranted to fully remedy the Respondent's unlawful refusal to bargain.

The Respondent contended that its recognition of the Union was invalid as the Union never demonstrated or offered to demonstrate, that it represented a majority of the unit employees; that the recognized bargaining unit described in the complaint is inappropriate; that the alleged unilateral implementation of a wage increase was consistent with its past practice regarding wage increases at its other operations; and that the General Counsel's motion for summary judgment was not timely filed.

In answer to the Respondent's contentions, the Board, in agreement with the General Counsel, stated that Section 10(b) of the Act precludes an employer from defending against a refusal-to-bargain allegation on the basis that its initial recognition of the union, occurring more than 6 months prior to the filing of unfair labor practice raising the issue, was invalid or unlawful. It concluded that the Respondent additionally is estopped from withdrawing recognition from the Union based on either an absence of proof of majority status at the time of recognition, or the alleged inappropriateness of the recognized unit.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for summary judgment May 5, 2003.

Catholic Healthcare West d/b/a Mercy Sacramento Hospital d/b/a Mercy General Hospital d/b/a Methodist Hospital d/b/a Mercy Hospital Folsom d/b/a Mercy Medical Center San Juan (20-RC-17967; 344 NLRB No. 93) Rancho Cordova, CA June 1, 2005. Members Liebman and Schaumber, with Chairman Battista dissenting, reversed the Regional Director's finding that the single-facility presumption has been rebutted and remanded the proceeding to the Regional Director for further appropriate action. The Regional Director had found that the Employer met its burden of establishing that the petitioned-for single-facility unit of skilled maintenance employees at Mercy General Hospital is not appropriate for bargaining and that the petitioned-for unit must include the skilled maintenance employees at all four acute care hospitals within the Mercy Healthcare Sacramento (MHS) subdivision of Catholic Healthcare West (CHW).

[HTML] [PDF]

The petitioning union is Operating Engineers Local 39. Members Liebman and Schaumber concluded that the Employer failed to demonstrate that the integration among the MHS facilities is so substantial as to negate the separate identity of Mercy General. They found that the Employer has failed to show that allowing representation of employees at the hospital alone in a single facility will have any greater impact on the provision of healthcare than that contemplated by the Board in *Manor Healthcare Corp.*, 285 NLRB 224 (1987), in Rulemaking, or in subsequent cases.

Chairman Battista would affirm the Regional Director and find that the Employer correctly asserted that the appropriate unit consists of the skilled maintenance employees at all four of the Employer's facilities located in the Sacramento area. While Chairman Battista recognizes that there is presumption in favor of a single-facility unit, he wrote: "However, that presumption must be tempered by two important considerations: (1) Congress has admonished the Board to guard against the 'undue proliferation of units in health care institutions'; and (2) the history of collective bargaining of this Employer is consistent with that Congressional admonition."

(Chairman Battista and Members Liebman and Schaumber participated.)

Daimler Chrysler Corp. (7-CA-46123, et al.; 344 NLRB No. 94) Detroit, MI May 31, 2005. The Board adopted the administrative law judge's recommendations and held that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide or to provide in a timely manner, Auto Workers Local 412 with relevant and necessary information it requested between April 3, 2003, and September 17, 2003, among others, in conjunction with a grievance and for an audit of merit-increase and lump-sum payment funds for unit employees for the years 1999-2003. [HTML] [PDF]

The Respondent asserted that the Union's request for information should be deferred to the parties' contractual grievance-arbitration procedures. Chairman Battista and Member Schaumber would defer if not bound by precedent. However, in the absence of a three-member Board majority to overrule current Board law, they find that the judge correctly applied the Board's policy of nondeferral in information request cases. *Pacific Bell Telephone Co.*, 344 NLRB No. 11, slip op. at fn. 3 (2005).

At the General Counsel's request, the Board revised the judge's recommended order and notice to include specific dates of the information requests and the items to which the Respondent is ordered to respond.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Auto Workers Local 412 (Unit 21); complaint alleged violation of Section 8(a)(1) and (5). Hearing at Detroit, Oct. 12 and 13, 2004. Adm. Law Judge George Carson II issued his decision Dec. 30, 2004.

Erica Inc., General Partner d/b/a Foodbasket Partners, Limited Partnership (28-CA-17521; 344 NLRB No. 96) Truth or Consequences and Hobbs, NM June 3, 2005. The Board adopted the administrative law judge's findings that the Respondent is a successor employer to Furr's Supermarkets, Inc. and violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with Food & Commercial Workers Local 1564 as the collective-bargaining representative of the unit employees working at the Respondent's grocery stores in Truth or Consequences and Hobbs, New Mexico. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Food & Commercial Workers Local 1564; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Truth or Consequences, April 17-19 and May 7, 2002. Adm. Law Judge Albert A. Metz issued his decision Oct. 11, 2002.

Kellogg's Snack Co. (2-CA-36270; 344 NLRB No. 91) New York, NY May 31, 2005. Affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish Teamsters Local 560 with information it requested in letters dated March 4, April 13, and April 27, 2004 regarding specific carriers in order to determine whether the Respondent used the carriers to make deliveries rather than unit drivers in violation of the parties' contract. [HTML] [PDF]

The Respondent argued that the Union did not need the requested information because the Respondent uses common carriers rather than unit drivers to deliver some of its products to independent distributors. Chairman Battista found the defense was based on "a faulty underlying premise—the Respondent's assertion that the disputed deliveries all originated from its bakeries rather than from its New York distribution centers where the unit drivers work and, as such, involved nonunit work." He explained that the argument "misperceives" the purpose of the Union's information request—to determine for itself whether, as the Respondent claims, the disputed deliveries originated from its bakeries. Chairman Battista concluded that the requested information, which shows where the disputed deliveries originated from, is relevant for the Union to decide whether or not it has a meritorious grievance and must be provided.

Chairman Battista and Member Schaumber noted that the Respondent does not argue that the Union's requests for information should be deferred to the parties' contractual grievance-arbitration procedures.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Teamsters Local 560; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York on Nov. 15, 2004. Adm. Law Judge Raymond P. Green issued his decision Feb. 25, 2004.

Blasters, Drillrunners, and Miners, Laborers Local 29 (29-CE-120; 344 NLRB No. 90) Brooklyn, NY May 31, 2005. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(e) of the Act by maintaining, giving effect to, and enforcing article 10, section 2, paragraph 1 of its collective-bargaining agreement with RailWorks Transit, Inc., particularly the second sentence of the paragraph that reads:

To assure the maintenance of work opportunities, the Employer stipulates that any firm engaging in Heavy Construction Work under Article VIII, Section 1 and 2 of the Agreement, in which it has or acquires a financial interest or is participating in a venture with other contractors or operators, shall be responsible for compliance with all of the terms and conditions of this Agreement. [HTML] [PDF]

The Board held that the sentence reflects secondary objectives and that it is not saved by the construction industry provision. Member Liebman agreed that this finding is in accord with precedent. The Board modified the judge's recommended order and notice to reflect its finding.

This case involves the assignment of work for the New York City subway. RailWorks Transit, Inc. and L.K. Comstock & Co., Inc. formed a joint venture called RWKS Comstock to perform some of the work. The work awarded to the joint venture included electrical construction and track work. RailWorks Transit, one of the two partners in the joint venture, agreed to be bound by a collective-bargaining agreement between the General Contractors Association and various labor organizations including the Respondent, which contains the disputed contract clause.

The joint venture assigned some of its work to M-Track Enterprises, another member of the General Contractors Association that employed laborers who were represented by the Respondent or one of its affiliates. M-Track reassigned the work to employees who were members of or represented by Electrical Workers IBEW Local 3. The Respondent objected to the reassignment and demanded arbitration. The Union sought to enforce article 10, section 2, paragraph 1 in an effort to compel the joint venture to be bound by the collective-bargaining agreement with the Respondent and to employ employees who were members of or represented by the Respondent or an affiliated union. The Union argued that since RailWorks Transit was one of the partners to the joint venture and signatory to an agreement with the Union, the joint venture was also bound to the same agreement. RWKS Comstock filed the instant charge alleging that the agreement violated Section 8(e).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by RWKS Comstock, a Joint Venture; complaint alleged violation of Section 8(e). Hearing at Brooklyn on April 27, 2004. Adm. Law Judge Raymond P. Green issued his decision June 18, 2004.

Pontiac Care and Rehabilitation Center (3-CA-24724; 344 NLRB No. 92) Oswego, NY May 31, 2005. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by threatening employees with reduction in wages or unspecified reprisals if employees select a union as their collective-bargaining representative, interrogating employees about their union support or union activities, and conveying the impression to employees that their union activities are under surveillance. It also found that the Respondent violated Section 8(a)(3) and (1) by discharging employee Rebecca Gibson on March 25, 2004. [HTML] [PDF]

There were no exceptions filed to the judge's recommended dismissal of Section 8(a)(1) allegations that: (1) the Respondent threatened employees with a loss of future wage increases and with the reduction of their current wages; (2) the Respondent engaged in various acts of surveillance of employees' union activities; and (3) the Respondent prohibited employees from wearing carnations as a show of support for SEIU 1199 NY Upstate Division.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by SEIU 1199 NY Upstate Division; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Oswego, July 27-29, 2004. Adm. Law Judge Arthur J. Amchan issued his decision Sept. 28, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

B & B Trucking, Inc. (B & B Trucking Employees Assn.) Kalamazoo, MI May 27, 2005. 7-CA-47022; JD-38-05; Judge Jane Vandeventer.

Basic Contracting Services, Inc. (an Individual) Albuquerque, NM May 25, 2005. 28-CA-20015; JD(SF)-44-05, Judge James L. Rose.

Izzo Electric & Son (Electrical Workers [IBEW] Local 99) Pawtucket, RI May 31, 2005. 1-CA-41706; JD-23-05, Judge Paul Buxbaum.

Airport 2000 Concessions, LLC (UNITE HERE Local 7) Baltimore, MD June 2, 2005. 5-CA-32092, 32185; JD-40-05; Judge Eric M. Fine.

Atlantic Union Resources, Inc. (an Individual) Covert, MI May 31, 2005. 7-CA-48067; JD-39-05, Judge John T. Clark.

Hillard Development Corp. d/b/a Provident Nursing Home (Service Employees Local 2020) Boston, MA June 2, 2005. 1-CA-42263; JD-41-05, Judge Bruce D. Rosenstein.

Electric By Miller, Inc. (Electrical Workers [IBEW] Local 584) Miami, OK June 2, 2005. 17-CA-22667(E); JD(ATL)-23-05, Judge George Carson II.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND DIRECTION OF SECOND ELECTION

Doshi Diagnostic Imagining Services, P.C., Brooklyn, NY, 29-RC-10219 May 31, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Caesars Riverboat Casino, LLC, Elizabeth, IN, 25-RC-10253, June 3, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Commercial Cargo Services, Inc., Tallalhassee, FL, 12-RC-9112, June 3, 2005 (Chairman Battista and Members Liebman and Schaumber)

Highland Plastics, Inc., Mira Loma, CA, 21-RD-2776, June 3, 2005 (Chairman Battista and Members Liebman and Schaumber)

Northeastern Industrial Contracting, Inc., Plattsburgh, NY, 3-RC-11589, June 3, 2005 (Chairman Battista and Members Schaumber and Liebman)

Miscellaneous Board Orders

ORDER [granting review with respect to whether Chris Reising and Gary Lewis are statutory supervisors, denying in all other respects, and remanding to Regional Director for further appropriate action]

V.L.P.S. Lighting Services, Moonachie, NJ, 22-RC-12557, June 3, 2005 (Chairman Battista and Members Liebman and Schaumber)